

BERNALILLO COUNTY
BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 2015-33

**[ENACTING AMENDMENTS TO THE VEHICLE SEIZURE AND FORFEITURE
ORDINANCE]**

IT IS HEREBY ORDAINED THAT; The Board of County Commissioners hereby amends the Vehicle Seizure and Forfeiture Ordinance, Section 82-4 et. Seq. as follows: The highlighted sections are amended to read as underlined or stricken.

(a)

Findings of fact. The board of county commissioners finds that:

(1)

The problems caused by those in the county who drive while under the influence of intoxicating liquor or drugs (DWI) (in violation of NMSA 1978, § 66-8-102, or its successor statute) are substantial. Among the problems caused by this type of unlawful activity are the potential for serious bodily injury and loss of life to the innocent citizens who are present upon public roads in the unincorporated area of the county.

(2)

Those who drive under the influence of intoxicating liquor or drugs are likely to cause considerable property damage while driving.

(3)

To allow those who are arrested for a second or subsequent offense of DWI (in violation of NMSA 1978, § 66-8-102, or its successor statute), or have had their license suspended or revoked as a result of a prior conviction for DWI (in violation of NMSA 1978, § 66-5-39, or its successor statute) access to motor vehicles, increases the likelihood that such persons will repeat the offense.

(4)

Motor vehicles which are used by drivers who are arrested for a second or subsequent offense of DWI and/or whose driving privileges have been revoked as a result of a prior conviction for DWI, constitute a nuisance to the general public and are dangerous to the health and safety of the general public.

(5)

Streets within unincorporated areas of the county have been the site of continuing and escalating illegal motor vehicle speed contests known as street racing and/or drag racing. Illegal street racers cause conditions that result in unsafe traffic

conditions for other vehicles, pedestrians, bicyclists, and playing children. The use of a motor vehicle to engage in racing or drag-racing (in violation of NMSA 1978, § 66-8-115, or its successor statute), or reckless driving (in violation of NMSA 1978 § 66-8-113, or its successor statute) upon streets within the unincorporated areas of the county, further prevent the full and peaceful enjoyment of the use of property of county residents and business owners and otherwise negatively impact the health, safety, and welfare of the community. The vehicles used in these illegal activities are therefore public nuisances.

(b)

Purpose of section. It is the purpose of this section to protect the health and safety of the citizens of the unincorporated areas of the county by abating such motor vehicle nuisances.

(c)

Vehicles declared nuisances; forfeiture.

Any motor vehicle operated by a person who is arrested for any of the following offenses within the unincorporated areas of the county: (1) a charge of a second or greater DWI (that is based on a prior DWI conviction), (2) driving with a revoked driver's license that was revoked as a result of a prior conviction for DWI, (3) engaging in or otherwise participating in a drag race or race for speed and who has at least one prior conviction of drag racing or reckless driving, or for driving recklessly and who has at least one prior conviction of drag racing or reckless driving, is hereby declared to be a public nuisance justifying the need for firm action to abate the public nuisance. Said vehicles are therefore subject to forfeiture pursuant to the provisions of this section.

(d)

Administration of section.

The county sheriff's department shall be responsible for administration of this section. Reasonable rules and regulations may be prescribed by the county manager or his designee with the approval of the board of county commissioners to carry out the intent and purpose of this section pursuant to the standards created by this section.

(e)

Seizure and forfeiture proceedings.

(1)

Motor vehicles subject to forfeiture under this section may be seized by any Bernalillo County Sheriff's deputy upon an order issued by the district court.

(2)

Seizure without such an order may be made if seizure is incident to an arrest of the driver of the vehicle for the following offenses:

(a)

A second or subsequent DWI (in violation of NMSA 1978, § 66-8-102, or its successor statute);

(b)

Driving on a revoked driver's license that was the result of a prior DWI conviction (in violation of NMSA 1978, § 66-5-39, or its successor statute);

(c)

Engaging in or otherwise participating in a drag race or race for speed (in violation of NMSA 1978, § 66-8-115, or its successor statute) and who has at least one prior conviction of drag racing or reckless driving;

(d)

For reckless driving (in violation of NMSA 1978 § 66-8-113, or its successor statute) and who has at least one prior conviction of drag racing or reckless driving.

(3)

A vehicle seized under this section shall not be subject to replevin, but is deemed to be in the custody of the Bernalillo County Sheriff's department seizing it, subject only to the orders and decrees of the district court. The Sheriff's department may take custody of the vehicle and remove it to an appropriate and official location within the district court's jurisdiction for disposition in accordance with this section.

(4)

Any sworn law enforcement officer lawfully deputized by the Sheriff of Bernalillo County may take possession of a motor vehicle pursuant to this article. Immediately after a vehicle is towed for forfeiture pursuant to subsection (e)(2), the arresting sheriff's deputy will serve a copy of the notice of vehicle seizure to the individual whom the vehicle was seized from at the time of the arrest. A copy of the notice of vehicle seizure will be mailed postage pre-paid to the lawfully registered owner and any lien holder of record. Ownership and any liens will be determined on the date of the seizure via New Mexico Motor Vehicle Division records. The notice shall contain the following information:

a.

The license plate number, make, type and color of vehicle;

b.

The location where the vehicle was seized;

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- c. A statement that the vehicle has been taken into custody and stored;
- d. The reason for the seizure;
- e. A name and phone number or title of a county employee from whom the owner can obtain further information;
- f. A statement that daily storage charges will be assessed in addition to a towing charge;
- g. A statement that the owner has the right to contest the validity of the impoundment by requesting a hearing in writing within ten calendar days of the mailing of the notice of vehicle seizure;
- h. A copy of Section 82-4, et seq.

(5)

Hearing. The lawfully registered owner of the vehicle may request an administrative hearing to be conducted by a hearing officer authorized by the county manager and the sheriff. The hearing, if requested within the period set forth above, shall be held within 20 business days (excluding weekends and holidays) of receipt of the request. A scheduled hearing may be continued to a later date by agreement of the parties subject to approval by the authorized hearing officer, or by sua sponte order of the hearing officer.

- a. The hearing shall be informal and governed by the rules of administrative hearings.
- b. The hearing officer shall only determine whether the law enforcement officer had:
 - (1) probable cause to make the arrest and
 - (2) if the vehicle was seized for DWI or Driving on a Revoked Driver's License, probable cause to believe the driver had a previous conviction for DWI; if the vehicle was seized for drag racing or reckless driving, probable cause to believe the

driver had a prior conviction for drag racing or reckless driving.

c.

The hearing officer shall mail written notice of the decision to the owner within five business days of the hearing.

d.

If the hearing officer finds that the law enforcement officer did not have probable cause to seize the vehicle in question or that the vehicle in question should otherwise be released in accordance with this ordinance, the hearing officer shall issue and date a certificate of release, a copy of which shall be given to the owner of the vehicle. Upon a showing of the owner's copy of the certificate, the county shall release the vehicle to its owner or the owner's legal agent and storage fees shall be waived. The owner will be responsible for towing fees incurred by the county as a result of the driver's arrest. If the owner fails to present such certificate to the county employee having custody of the vehicle within 24 hours of its receipt, excluding days when the county seizure office is not open for business, the owner shall assume liability for all subsequent storage charges. The certificate shall advise the owner of such requirement.

e.

If the hearing officer determines that the law enforcement officer had probable cause pursuant to Section 5(b), and therefore, issued a finding that the vehicle was properly seized, proceedings for an order for forfeiture shall be instituted within a reasonable period of time.

f.

In the event of a finding of probable cause, any person or entity who, pursuant to the records of the Motor Vehicle Division of the State Taxation and Revenue Department, has an ownership or security interest in the vehicle shall be served with notice of the forfeiture proceedings.

(6)

When property is forfeited pursuant to this section the Bernalillo County Sheriff's department shall sell the motor vehicle at public auction and the proceeds shall be used to carry out the purpose and intent of this ordinance. If a vehicle is forfeited pursuant to this ordinance and the vehicle is not sold, the sheriff may employ such vehicle to be utilized by law enforcement for purposes that will serve the community, in this circumstance the vehicle shall

only be used for DWI and/or drug prevention and education and/or general traffic safety enforcement/accident prevention and education. Any proceeds from sold vehicles that exceed the costs of administering this ordinance shall be used for DWI enforcement, prevention, and education and/or drug enforcement, prevention and education and/or general traffic safety enforcement /accident prevention and education. The Bernalillo County Sheriff shall be responsible for maintaining and operating a seizure fund consistent with this provision. The DWI advisory board may make recommendations to the Sheriff for the utilization of funds.

a.

Any vehicle not recovered by the owner within 30 days after being Notified by the Sheriff's department that such vehicle has been released by the Sheriff's department shall be deemed abandoned and disposed of in accordance with the notice provisions of NMSA 1978, § 29-1-14 (or its successor statute).

(f)

Property interest not subject to forfeiture. Notwithstanding subsection (e) of this section any forfeiture shall be subject to the owner or co-owner of a vehicle raising as a defense the interest of an innocent owner or secured party, when:

(1)

Any owner or co-owner may present evidence that he or she did not have knowledge of, nor consented to, the use of the vehicle by the driver who caused the vehicle to become seized. If such evidence is presented, the burden of proving knowledge and consent shall be upon the county. When the county can prove by a preponderance of the evidence that the owner or co-owner has actual or constructive knowledge that the individual arrested has been previously arrested or cited for DWI and/or driving on a revoked or suspended license, or for engaging in or otherwise participating in a drag race or race for speed (in violation of NMSA 1978, § 66-8-115, or its successor statute), or for reckless driving (in violation of NMSA 1978 § 66-8-113, or its successor statute) in a vehicle that the owner owns, the owner or co-owner may not be considered an innocent owner. Constructive knowledge may include, but is not limited to, evidence of a previous arrest or citations in the vehicle, evidence of free access to the vehicle and evidence of knowledge of revoked or suspended license. Any owner or co-owner who is physically present inside the vehicle at the time of the arrest of the driver, may not be considered an innocent owner.

(2)

Any secured party, to the extent of the security interest, if the secured party proves that the security interest was acquired in good faith with no knowledge or reason to believe that the vehicle would be used by a driver who would be arrested for DWI or by the driver whose license has been suspended or revoked and who did not have actual knowledge of a prior seizure of the vehicle. If the security interest is greater than the value of the vehicle, title shall be transferred to the secured party upon order of the district court. Any secured party acquiring an interest after the vehicle is in custody of the sheriff's department shall have the burden of intervening in the forfeiture proceeding to protect such interest. Any interest in the vehicle must be properly filed with the New Mexico Motor Vehicle Division in accordance with sections 66-3-201 and 66-3-202 NMSA 1978 (or their successor statutes) before the date of incident leading to the seizure.

(g)

Property not subject to forfeiture upon a showing of no prior conviction.

(1)

At the time of the probable cause hearing, any owner or co-owner of the vehicle may present evidence to show that the driver of the vehicle did not have a prior conviction for DWI (if the vehicle was seized for DWI or for driving on a revoked license); or did not have a prior conviction for drag racing or reckless driving (if the driver was arrested for drag racing or reckless driving); or that the prior conviction used as the basis for the seizure is older than 15 (fifteen) years for DWI or driving on a revoked license or older than 5 (five) years for drag racing or reckless driving offenses.

(2)

If the owner or co-owner can prove by a preponderance of the evidence that the driver of the vehicle did not have a prior conviction (as referenced in (g)(1)) at the time of the vehicle seizure, the hearing officer shall issue and date a certificate of release, a copy of which shall be given to the owner of the vehicle. Upon a showing of the owner's copy of the certificate, the county shall release the vehicle to its owner or the owner's legal agent and storage fees shall be waived. The owner will be responsible for towing fees incurred by the county as a result of the driver's arrest. If the owner fails to present such certificate to the county employee having custody of the vehicle within 24 hours of its receipt, excluding days when the county seizure office is not open for business, the owner shall assume liability for all subsequent storage charges. The certificate shall advise the owner of such requirement.

(h)

Temporary seizure immobilization. Notwithstanding any other provision of this ordinance, in the interest of public safety and health, the Sheriff's department may offer the owner of a motor vehicle seized pursuant to this ordinance, an opportunity to temporarily immobilize the vehicle. Such immobilization may be accomplished by an immobilization device (boot) at the owner's designated location within the county of Bernalillo, or by impoundment at a secure facility, in accordance with the procedures established by the Sheriff's department. The owner shall pay the Sheriff's department a fee for this voluntary, temporary seizure/immobilization and sign an immobilization agreement with the County of Bernalillo. Such temporary seizure/immobilization shall be imposed after the opportunity for a probable cause hearing as provided in this ordinance unless such hearing is waived in writing by the owner. Any immobilization period shall be consistent and based upon the number of DWI and/or driver's license revocation convictions and/or Drag-racing/Reckless Driving convictions, as verified by the New Mexico Motor Vehicle Division.

(i)

Release of motor vehicle to lienholder. Notwithstanding any other provision of this ordinance, the Sheriff's department may enter into an agreement to release a seized vehicle to the lienholder upon the following terms and conditions:

(1)

all individual owners/claimants disclaim all interests in the subject vehicle, or are defaulted in this cause of action, or the district court grants forfeiture;

(2)

the lienholder provides proof of a valid lien registered with the New Mexico Motor Vehicle Division, and has submitted an affidavit of repossession to the Sheriff's department;

(3)

the lienholder pays a fee, set by the board of county commissioners, for the costs associated with the seizure and storage of the subject vehicle;

(4)

the lienholder acknowledges that the subject vehicle was seized because it was operated by a person who is arrested for the offense of a second or subsequent DWI (in violation of NMSA 1978, § 66-8-102, or its successor statute) or for driving with a revoked license that was the result of a prior DWI conviction (in violation of NMSA 1978, § 66-5-39, or its successor statute), or for engaging in or otherwise participating in a drag race or race for speed (in violation of NMSA 1978, § 66-8-115, or its successor statute) and who has at least one prior conviction of drag racing or reckless driving, or for reckless driving (in violation of NMSA 1978 § 66-8-113, or its successor statute) and who has at least one prior conviction of drag racing or reckless driving;

1 (5)

2 the lienholder agrees to relinquish any claim to the to the subject vehicle and to
3 transfer all claims and rights lienholder has in the vehicle to the Sheriff's department
4 if the same person who was operating the vehicle when it was seized, is again
5 arrested and charged with a second or subsequent DWI (in violation of NMSA 1978,
6 § 66-8-102, or its successor statute), or for driving with a revoked license that was
7 the result of a prior DWI conviction (in violation of NMSA 1978, § 66-5-39, or its
8 successor statute), or for engaging in or otherwise participating in a drag race or race
9 for speed (in violation of NMSA 1978, § 66-8-115, or its successor statute), or for
10 reckless driving (in violation of NMSA 1978 § 66-8-113, or its successor statute);

11 (6)

12 the lienholder agrees to waive any future innocent owner defense if the same person
13 who was operating the vehicle when it was seized is again arrested and charged with
14 a second or subsequent DWI (in violation of NMSA 1978, § 66-8-102, or its
15 successor statute), or for driving with a revoked license that was the result of a prior
16 DWI conviction (in violation of NMSA 1978, § 66-5-39, or its successor statute), or for
17 engaging in or otherwise participating in a drag race or race for speed (in violation of
18 NMSA 1978, § 66-8-115, or its successor statute), or for reckless driving (in violation
19 of NMSA 1978 § 66-8-113, or its successor statute) while operating the subject
20 vehicle;

21 (7)

22 the lienholder agrees to accept the subject vehicle in its current condition, and to
23 waive all claims, known or unknown, against Bernalillo County and its Sheriff's
24 department.

25
26 (j)

27 *Severability clause.* If any section, paragraph, sentence, clause, word or phrase of
28 this section is for any reason held to be invalid or unenforceable by any court of
29 competent jurisdiction, such decision shall not affect the validity of the remaining
30 provisions of this section. The Bernalillo County Commissioners hereby declares that
31 it would have passed this section and each section, paragraph, sentence, clause,
32 word or phrase thereof irrespective of any provision being declared unconstitutional
33 or otherwise invalid.

CONTINUATION PAGE 10, ORDINANCE 2015-33.

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(Ord. No. 92-15, §§ 1—5, 11-17-92; Ord. No. 2012-19, 9-25-12)

DONE this ____ day of _____, 2015.

APPROVED AS TO FORM

BOARD OF COUNTY COMMISSIONERS

Theresa Baca Sandoval, Acting County Attorney

Maggie Hart Stebbins, Chair

Art De La Cruz, Vice Chair

Debbie O'Malley, Member

ATTEST:

Lonnie C. Talbert, Member

Maggie Toulouse Oliver, County Clerk

Wayne A. Johnson, Member